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SUBJECT: KENYA'S CONSTITUTIONAL REFERENDUM: ORANGE
CRUSH OF KIBAKI'S HOPES

REFTEL: NAIROBI 4835

11. (SBU) SUMMARY: President Kibaki acknowledged the defeat of the proposed new constitution at mid-afternoon November 22, with the "no" vote decisively ahead in Kenya's constitutional referendum. "No" supporters had already been celebrating their not-yet-official victory. The Electoral Commission of Kenya confirmed the result a few minutes later, followed by an Orange ("no") press conference. The results are clearly a rebuke to the President, who was strongly behind the proposed constitution, and his government. It is also a rebuke of the "Big Man" presidential concept, and of a perceived attempt by the Kikuyu ethnic group to achieve hegemonic power. END SUMMARY.

12. (U) At 1500 hours local time on November 22, with the vast majority of the votes counted, President Kibaki made a short statement in Kiswahili conceding the defeat of the proposed new constitution in the previous day's national referendum. The concession seemed inevitable, as the Orange or "no" vote had gained "an unassailable lead" of around a million votes by morning. Shortly after the President's speech, the Electoral Commission of Kenya (ECK) confirmed the results, announcing that 2,523,918 "yes" votes versus 3,548,477 "no" votes had been counted (this is 58 percent versus 42 percent of the counted "yes" and "no" votes). (Of provinces, only the (mostly Kikuyu) Central Province of Kenya's eight provinces delivered a "banana" or "yes" vote.) The ECK noted that while a few of Kenya's 210 constituencies had not been able to vote or had not yet reported their results, the additional votes could not affect the outcome.

13. (U) At the "Orange" press conference that followed the ECK announcement, the LDP's Raila Odinga spoke briefly, then handed the floor to KANU's Uhuru Kenyatta. Uhuru said Kenyans have shown they do not want an imperial presidency, but accountable leadership. He said the "no" vote was despite the "illegal" use of state power and resources by the other camp. Kenya has rejected the politics of "sycophancy and dictatorship," he said. Kenyatta appealed to Central Province to "reject leadership that isolates you," and invited the Banana team to work with the Orange team on constitutional reform. He also invited all Kenyans, of every persuasion, to come to Uhuru Park November 26 for prayers and thanksgiving. Odinga then asked a bishop present to offer prayer for "those killed in cold blood by brutal security services."

14. (U) "Orange" supporters have been shown dancing and celebrating in the streets in various towns of Kenya since mid-morning. In the late morning there was also a group of "orange" supporters at the Kenyatta International Conference Center (where the national tally is being conducted) who were demanding a permit from the government to hold a victory rally in Uhuru Park today, as well as demanding that the government concede the orange victory. (NOTE: the concession took place, the permit was unnecessary. END NOTE.) To this point, there have been no reports of violence at such celebrations.

15. (SBU) The Embassy has received reports of some suspiciously high turnouts in perhaps a dozen Orange constituencies. While these seem likely to involve fraud, it does not appear that there has been a significant impact on the national result.

16. (U) Uhuru Kenyatta, head of KANU, the old ruling party (and an "Orange" stalwart), spoke gracious words on Kenya television about the referendum being about a constitution for the whole nation of Kenya, not about one ethnic group or individual losing or winning. (NOTE: Kenyatta's largely Kikuyu home constituency voted "yes" in the referendum, in what

some saw as a personal rebuke to him for breaking ranks with his tribesmen. END NOTE.) Embassy has not received reports of any major pro-"yes" government official other than the President reacting to the preliminary results. A number of Kenyan commentators called it a crushing political blow for the President and his supporters in the government.

COMMENT

17. (SBU) It is impossible to see the referendum result as anything but a stinging rebuke to President Kibaki and the ruling group around him. Despite last-minute backpedaling, the President clearly committed his own prestige to the "yes" side. In addition, the earlier "Bomas" draft had held to Kibaki's 2002 bargain with Raila Odinga and his allies: Kibaki was to get the presidency, the rest of the country was to get a "non-imperial" president in the future constitution. That is the bargain that Kibaki clearly broke, maneuvering until he got the now-rejected draft (which if anything made the Presidency stronger than before). Kibaki will have to make compromises even to govern until the 2007 elections. Whether he will be a viable presidential candidate in those elections is not clear, but he has certainly been weakened politically.

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